

**UNITED STATES COURT OF APPEALS**

**JAN 11 2002**

**TENTH CIRCUIT**

**PATRICK FISHER**  
Clerk

DALE M. L. DENNEY,

Plaintiff-Appellant,

v.

MARSHA SPANGLER, District Court  
Clerk; (FNU) DAVENPORT, Mr. and  
Mrs. Davenport, District Court Clerk;  
JOHN DOE, District Court Clerk; and  
JANE DOE, District Court Clerk,

Defendants-Appellees.

No. 01-3329

(D.C. No. 01-CV-3357-GTV)

(D. Kansas)

**ORDER AND JUDGMENT\***

Before **SEYMOUR** and **McKAY**, Circuit Judges, and **BRORBY**, Senior Circuit  
Judge.

After examining the briefs and the appellate record, this panel has  
determined unanimously that oral argument would not materially assist the  
determination of this appeal. See Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G).

The case is therefore ordered submitted without oral argument.

This is a pro se state prisoner civil rights appeal. Mr. Denney sought

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\*This order and judgment is not binding precedent, except under the  
doctrines of law of the case, res judicata, and collateral estoppel. The court  
generally disfavors the citation of orders and judgments; nevertheless, an order  
and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

damages, declaratory judgment, and injunctive relief for Defendants' alleged alteration of his complaint and information filed in his state criminal proceeding. The district court dismissed Mr. Denney's complaint for failure to state a claim. We agree with the district court's well-reasoned opinion which states that Mr. Denney's "broad reference to equal protection and due process . . . fall[s] far short of presenting any cognizable claim of constitutional deprivation." Order at 2.

We also agree with the district court that Mr. Denney's claim for damages is premature absent a showing that his conviction has been overturned. Mr. Denney has a § 2254 petition pending in the United State District Court of Kansas. Until this petition has been resolved, Mr. Denney cannot recover damages pursuant to § 1983.

Appellant's complaint is **DISMISSED** without prejudice.

We remind Appellant that because his motion to proceed in forma pauperis on appeal was granted, he must continue making partial payments on court fees and costs previously assessed until such have been paid in full.

Entered for the Court

Monroe G. McKay  
Circuit Judge